

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2004-000909

03/12/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

PHOENIX WEST PRISON LLC, et al.

MICHAEL G GALLOWAY

v.

MARICOPA COUNTY, et al.

JAY C JACOBSON

UNDER ADVISEMENT RULING

(Defendant's Motion For Summary Judgment and Plaintiffs' Cross-Motion For Partial Summary Judgment)

This case involves five property tax appeals from the State Board of Equalization to the Tax Court by Phoenix West Prison, LLC (Phoenix West Prison) for seven different tax years (2001-2007). Phoenix West Prison, a for-profit limited liability company, purchased the property in July 31, 2002. Plaintiffs' claims are: (1) The County's value of the property is excessive, (2) The County misclassified the property as Class One, and (3) the County has assessed the property in a discriminatory manner. The three claims are resolved by the Court's determination of the classification issue.

Preliminarily, the Court observes that Phoenix West Prison, L.L.C. is essentially an alter ego of Community Finance Corporation. As a technical matter, only Phoenix West Prison, as owner of record, has standing to challenge the County's assessment of the property. *Maricopa County v. Superior Court*, 170 Ariz. 248, 254-55 (1991). Neither Phoenix West Prison nor Community Finance Corporation has established that it actually paid taxes on the property for the 2001 and 2002 tax years. The record owner, and therefore the taxpayer, at that time was Correctional Services Corporation. Absent a showing that it actually paid the taxes, Phoenix West Prison has no standing to recover any payments made. The Court sees no dispute over the current usage of the property: it is a prison.

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Arizona law contains no specific classification for prison property. A.R.S. § 42-12001(12) includes in Class One “real property and improvements that are devoted to any other commercial or industrial use, other than property that is specifically included in another class described in this article, and that are valued at full cash value.” Unless the property falls within another class, it falls by default into Class One.

Plaintiff argues that a privately-owned prison is properly categorized as leased residential property, Class Four, pursuant to A.R.S. § 42-12004(A)(1). Plaintiff’s characterization of its prison as a residential facility “effectively leased to the ADOC and subleased to the inmates,” “essentially no different than any other rental housing” while creative, is not embraced by the Court. Prisoners have few if any of the rights generally associated with residential property renters. None of the inhabitants of Phoenix West Prison decided to live there after weighing the various residential options offered by the free market, nor do they have the option of leaving should a more attractive opportunity become available. The inmates’ “residence” in Phoenix West, then, is incidental to their status as prisoners. It follows that the prisoners do not occupy their cells solely for residential purposes. *U-Stor Bell, L.L.C. v. Maricopa County*, 204 Ariz. 79, 81-82 ¶ 15 (App. 2002). Nor do they “lease” or “rent” their cells within the ordinary meaning of those terms. *Id.* at 82 ¶ 17. DOC leases the cells as part of its lease of the entire facility, but it does not sublease them, or provide them free of charge, rather, as mentioned, it places prisoners in the cells to further their incarceration and punishment. The relationship is not master-servant, as in *U-Stor*, but neither is it landlord-tenant. The use of Phoenix West is thus far different from the ordinary landlord’s use of property for the production of rental income, the situation which A.R.S. § 42-12004(A)(1) was intended to address. *See id.* at 82-83 ¶ 20-21. Because the property does not qualify for Class Four status, it necessarily falls under Class One, pursuant to the default provision of A.R.S. § 42-12001.

Therefore, the County’s Motion for Summary Judgment is granted. Plaintiff’s Cross Motion (Partial) for Summary Judgment is denied.